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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 1357

JAMES BISENIUS,

Appellant,

v.

JAMES L. KARNS, Commissioner of Motor Vehicles,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

MOTION TO DISMISS APPEAL

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Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, appellee moves to dismiss the appeal in the above entitled action upon the ground that the appeal does not present a substantial federal question. In support of said motion to dismiss appellee submits the following facts, reasons, and authorities as to why the questions presented are not so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution.

NATURE OF ACTION

In this action appellant challenges the constitutionality of the Wisconsin motorcycle helmet law. Sec. 347.485 (1) (a), Wisconsin Statutes, reads:

> "Protective headgear for motorcyclists.
> (1) (a) No person shall operate or ride upon a motor-driven cycle on any highway unless such person is wearing protective headgear of a type and in the manner approved by the commissioner."

This statute makes mandatory the wearing of crash helmets by motorcyclists when riding motorcycles on the public highway. This law is applicable only to the use of the public highway. The helmet requirement is not applicable to off-the-highway situations such as races, hill climbs, and trail riding. Many other states have adopted similar laws. These laws have been adopted pursuant to standards promulgated by the United States Department of Transportation, which standards the states are required to meet. (A-Ap. 123)

ARGUMENT

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

A. The Police Power May Protect A Person From His Own Recklessness.

The position of the appellant is that this law requires the individual motorcyclist to protect himself and that such requirement has no relationship to the general public welfare. It is contended that this is an unreasonable exercise of the police power in that it unduly interferes with personal liberty to take whatever risks a person thinks appropriate. It is argued that the state may not require a person to take steps to protect himself even from his own recklessness. It is the position of the appellee that the United States Supreme Court has already considered such an argument and rejected it.

In *Holden v. Hardy* (1898), 169 U. S. 366, 397, 42 L. Ed. 780, 18 S. Ct. 383, a statute limited the hours of labor in mines to eight hours a day. It was argued that this deprives a laborer of his right and freedom to contract to work longer hours if he chose. The court held it was proper to protect such a person, even against himself. The court said:

> " • • • But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or *where the public health demands that one party to the contract shall be protected against himself.* 'The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.' "(Emphasis supplied)

This language was quoted with approval in *West Coast Hotel v. Parrish* (1937), 300 U.S. 379, 393, 394, 81 L.Ed. 703, 57 S. Ct. 578, involving regulation of woman labor. In *Zucht v. King* (1922), 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194, it was held that an appeal (Writ of Error) will be dismissed for lack of a substantial federal question where previous decisions had settled the question involved.

Appellant's argument that he is free to take whatever risks he chooses, carried to its logical conclusion, would include the right to risk self destruction in a fatal accident. There is no such right. Suicide was a crime at common law. It is a grave public wrong. *Stiles v. Clifton Springs Sanitarium Co.* (W.D.N.Y. 1947), 74 Fed. Supp. 207; 83 C.J.S., Suicide, p. 783, sec. 2.

Further carrying appellant's argument to its logical conclusion would seem to invalidate many salutary police power regulations designed to protect the very persons required to obey the laws involved. This would include laws requiring hunters to wear brightly colored jackets, prohibiting riders on cycles from attaching the cycle to another vehicle on the highway, prohibiting persons from riding upon any part of a vehicle not designed for use of passengers, requiring boats to be equipped with life preservers, prohibiting aerial performances without a net, requiring water skiers to wear life preservers, requiring tunnel workers to wear protective helmets and other types of workers to wear protective goggles. Such laws are clearly in the public interest and constitutional under the police power.

B. The Helmet Law, In Protecting The Rider, Protects The Public Welfare Generally.

The mandatory helmet law is not just a matter of private concern or personal liberty. The public interest and

the general public welfare is involved.

First, motorcycling is becoming increasingly popular. The number of motorcycles registered has been increasing rapidly since 1955. In 1967 in Wisconsin alone there were 60,000 such vehicles registered. (A.-Ap. 121, 122) Motorcyclists are a large and growing segment of our society. Is not a law which benefits such a large group of citizens, a substantial benefit to the public generally and to the general public welfare?

Second, highway safety is clearly a matter of great public concern, which has become a major problem today. Accident statistics show that many motorcyclists are being severely injured and that crash helmets will reduce these injuries. Is society powerless to take effective action to reduce these injuries? In Wisconsin, as in most states, the use of the public highway has been held to be a privilege and not a property right. Such privilege is subject to reasonable regulation under the police power in the interest of public safety on the highways. *State v. Stehlek* (1953) 262 Wis. 642, 56 N.W. (2d) 514. In this respect it should be noted that Wisconsin's Motorcycle Helmet Law applies only on the public highway, not on private property. Appellant's principal argument is that such law constitutes an invasion of privacy and an interference with personal liberty. In support of this argument he cites *Griswold v. Connecticut* (1965), 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. (2d) 510, which held invalid a state statute, prohibiting the use of contraceptives, as an invasion of privacy and an interference with personal liberty. Since the helmet law applies only on the public highway, it is obvious it does not invade this private sector of human life. An individual's beliefs and practices concerning contraception are personal and private matters concerning no one but the persons involved. However, there is nothing personal and private

about death and injury on the public highway. Highway safety is a very public matter and is everybody's concern.

Third, a clear benefit to the public arises from the fact that the wearing of crash helmets cuts down on the seriousness of head injuries and reduces the number of fatal injuries. This benefits both the riders and their families. The great increase in injuries due to traffic accidents is a great burden on insurance companies and is driving insurance premiums higher and higher. Where injured riders are unable to support themselves, welfare agencies are additionally burdened. Increasing injuries further burden already over crowded hospitals and emergency police and hospital facilities. Thus the public welfare is clearly affected in these respects.

Fourth, a motorcyclist wearing a crash helmet, will be less affected when struck on the head by flying stones, insects, sticks, tree branches or other objects. Such a blow on the head of a rider without a helmet could cause him to lose control of his cycle and injure other users of the highway. It is primarily on this reasoning that the Wisconsin Supreme Court sustained the constitutionality of the helmet law, in the case here on appeal to the United States Supreme Court. (A-Ap. 138-141)

Likewise, on the same basis the Supreme Courts of three other states have sustained the constitutionality of similar motorcycle helmet laws. *Commonwealth v. Howie* (1968), — Mass. — 238 N.E. (2d) 373; *State ex rel Colvin v. Lombardi* (1968) — R. I. — , 241 A. (2d) 625; *Everhardt v. New Orleans* (1968) — La. — , 217 So. (2d) 400. Also, in an as yet unreported decision, an intermediate appellate court in Connecticut has sustained such a law. *Connecticut v. Burzycki* (Jan. 17, 1969) 37 U.S. Law Week 2448. The only case contra was decided by an intermediate appellate

court in Michigan. *American Motorcycle Assn. v. Davids* (1968), (Mich. App.), 158 N.W. (2d) 72.

It is significant that in *Commonwealth v. Howie,* the Massachusetts helmet law case cited above, the United States Supreme Court denied certiorari. 89 S.Ct. 485, 21 L.Ed. (2d) 464. There would seem to be no more reason to review the Wisconsin decision than there was to review the Massachusetts decision.

CONCLUSION

It is the conclusion of the appellee that no substantial federal question exists requiring a full consideration on the merits. Appellee therefore respectfully submits that the motion to dismiss the present appeal should be granted.

Respectfully submitted,

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